

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: OHIO EXECUTION
PROTOCOL LITIGATION**

**Case No. 2:11-cv-1016
JUDGE GREGORY L. FROST
Magistrate Judge Michael R. Merz**

This document relates to: All Plaintiffs.

ORDER

On October 30, 2015, Plaintiffs filed a motion to modify (ECF No. 630) the protective order set forth in this Court's October 26, 2015 Opinion and Order (ECF No. 629). In that motion, Plaintiffs ask this Court to modify the stayed protective order to permit drug-source discovery. Plaintiffs propose that the Court employ a "RESTRICTED" category of discovery that would theoretically preclude disclosure of the protected information to the public and thereby avoid the public-pressure concerns addressed by the protective order.

The motion to modify is not well taken. Without questioning the character or professionalism of *any* of the counsel who have appeared in this litigation, the Court remains cognizant of the leaks that have nonetheless occurred in this litigation in the past where confidential information has appeared in the media, despite this Court establishing protections to preclude such disclosure. Additionally, in asserting that their qualified-disclosure proposal addresses all of the concerns underlying the protective order, Plaintiffs either misread or strategically mischaracterize this Court's October 26, 2015 Opinion and Order. Part of the harassment, harm, or similar undesirable consequences implicitly animating the protective order decision is that disclosure of identities subjects the disclosed persons or entities to suit. A reasonable inference to be culled from the applications for anonymity noted in the privilege log

is that the entities making application do not want to subject themselves to such litigation. This is one reason why the Court noted the burden and prejudice on Defendants that disclosure would present: “a loss of the ability to pursue, much less fulfill, a lawful duty,” which is the ability to conduct executions by lethal injection. (ECF No. 629, at Page ID # 19406-19407.) It is also why this Court expressly recognized, in certifying the decision for interlocutory appeal, the issue that “granting the motion for a protective order means that this Court has essentially and summarily immunized the unnamed pharmacy defendants and others from the claims asserted against them in this case.” (*Id.* at Page ID # 19411.)

Plaintiffs’ requested modification of the protective order does nothing to mitigate, much less eradicate, the foregoing concerns. To the contrary, the modification would lead to one of the consequences necessitating the protective order. The Court therefore **DENIES** the motion to modify the protective order. (ECF No. 630.)

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE